

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES L. SPANN,)
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Plaintiff,)
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vs.) Case No. 4:04CV228 CDP
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LORNA BELL,)
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)
Defendant.)

MEMORANDUM AND ORDER

This case is set for trial on the two-week docket beginning on August 27. At this time I expect to reach it for trial on Tuesday, September 4. Plaintiff has filed a motion to compel, which defendant opposes. I will grant the motion to compel, but will limit somewhat the scope of the documents defendant must produce.

Plaintiff seeks the production of the Missouri Department of Correction chronological logs for the period January 12, 2004 to February 12, 2004. Defendant objects that she is not in possession of these documents, that the request was untimely under the Case Management Order, that it is overbroad and insufficiently specific, and that the documents are not relevant.

I agree that the request is overbroad, but I will order defendant to produce a more limited category of documents. Defendant has already produced the relevant

log for January 26, 2004, which defendant described in her December 4, 2006 court filing [docket # 85] as a record that will establish certain facts of the case and that will establish that she acted properly on the date of the incident. Plaintiff wants the similar logs for the dates surrounding the incident. He urges that these documents may provide material relevant to cross-examination, for example, if the documents for other dates appear to have been filled out differently, that could raise an inference that the January 26 log was specially created to support defendant's arguments in this case. This is a reasonable request. Defendant has the ability to produce this document – it is in her “control” for the reasons stated by plaintiff's brief, and it would be unfair for her to produce and rely on the same document for the date in question and then claim that the documents for the dates immediately before and after are not in her control. Although the request is untimely, I will nevertheless grant the motion because it is not burdensome and it is in the interests of justice.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to compel [#111] is granted to the following extent: defendant shall produce, no later than August 23, 2007, the MDOC chronological logs for plaintiff's housing unit, Housing Unit 7 at ERDCC, for the period of January 19, 2004 to February 2, 2004.

IT IS FURTHER ORDERED that the jury trial of this case will begin on September 4, 2007. All parties and counsel shall be in the courtroom ready to proceed with any final pretrial matters at 8:30 a.m., so that jury selection can begin promptly at 9:00 a.m.

IT IS FURTHER ORDERED that plaintiff's application for writ [#100] is granted and the Clerk shall issue the writ so that witness Lamont Gordon may be brought to court on September 4, 2007.

Catherine D. Perry

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 17th day of August, 2007.